

# TENNESSEE REGULATORY AUTHORITY



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## Before the Federal Communications Commission Washington D.C.

In the Matter of

Empowering Consumers to Prevent and Detect	)	CG Docket No. 11-116
Billing for Unauthorized Charges ("Cramming")	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing Format	)	CC Docket No. 98-170

### Comments of Tennessee Regulatory Authority Chairman Kenneth C. Hill

As Chairman of the Tennessee Regulatory Authority ("TRA"), I appreciate the opportunity to comment on the substance of the FCC's *Notice of Proposed Rulemaking* ("NPRM") concerning cramming. I wholly support efforts by the FCC to protect consumers from the economic harm associated with the placement of unauthorized charges on their telecommunications bills. As will be discussed in more detail below, the TRA adopted rules in 1999 that directly address many of the tentative conclusions reached in the NPRM.<sup>1</sup> A copy of the TRA rules addressing cramming is attached. In general, I support rules that provide consumers with choices to limit their exposure to potential cramming incidents, include clear guidance to industry to provide consumers with said choices and contain robust enforcement mechanisms directed against parties engaged in cramming.

I support a requirement that wireline carriers offer the option to subscribers to block third-party charges.<sup>2</sup> TRA rules presently require carriers to offer a service to allow consumers to block the placement of recurring charges from third-party service providers.

<sup>1</sup> The TRA's rulemaking authority for cramming derives, in part, from Tenn. Code Ann. 65-4-125(b). The statute reads "No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services."

<sup>2</sup> NPRM at Para. 60.

TRA Rule 1220-4-2-.58(4) specifically requires "Telecommunications service providers are required to offer their customers a service that blocks the placing of monthly recurring charges on telephone bills by third party service providers. This blocking service will give the subscriber the ability to better prevent unauthorized charges appearing on his or her telephone bill by not allowing third party service providers the ability to place monthly recurring charges on the customer's bill without proper verification."

The FCC correctly focuses on prophylactic measures, like blocking, to prevent improper third-party billing. In many instances, consumers may be successful in recovering the monetary amounts associated with third-party billing but will not be compensated for the time expense associated with reversing improper charges. For example, a consumer may be required to make several calls to remedy being crammed. Often the consumer will call the telecommunications provider that issues their bill and then be directed to call the party that placed the charge on the bill. If the responsible party is a billing aggregator, the consumer may be required to call the true service provider that submitted the charge to billing aggregator. If the consumer is successful in having the charges refunded, they still must wait several months for billed amounts to be refunded. The process is even more cumbersome for consumers that must enter the regulatory process to redress improper billing. All of these steps to address cramming, at a minimum, cause consumers inconvenience and waste their valuable time. The option to preemptively block third-party charges is the only way for consumers to avoid the potential costs of cramming.

I support the proposal to require carriers to inform consumers of the availability of a service to block third-party billing. TRA Rule 1220-4-2-.58(10) requires "Telecommunications service providers shall inform their subscribers twice a year of their third party, 900 and international blocking services and how to subscribe to the services. This notification can accompany the subscriber's telephone bill." While the NPRM suggests notification "...at the point of sale, on each bill, and on their websites ..."<sup>3</sup>, I believe that notification on each bill may not be necessary to ensure consumers are aware of the option to block third-party charges. While not required by existing TRA rules, a requirement that customers be notified of third-party billing blocking options at the point of sale appears to be uniquely beneficial to consumers. I interpret the phrase "point of sale" to mean the contact between a customer and service provider when either service is initiated by the customer or changes to existing service is requested by the customer.

I am concerned that consumers may be confused about which regulatory agency to contact to assist in resolving a cramming complaint. The NPRM proposes to require wireline carriers to include contact information for the FCC and a "... conspicuous statement indicating that consumer inquiries and complaints may be submitted to the Commission."<sup>4</sup> In states that require customer bills to include contact information of the state utility commission, the NPRM notes that customer bills will be required to place

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<sup>3</sup> NPRM at Para. 40.

<sup>4</sup> NPRM at Para. 51.



contact information for both the state commission and the FCC.<sup>5</sup> The NPRM itself cites an FTC claim that "... there may be consumer confusion about which federal or state agency to contact to complain about the various entities that engage in cramming."<sup>6</sup> While I appreciate that the FCC intends to expend its valuable resources to assist consumers in resolving cramming complaints, the proposal appears to hold the potential to create more confusion for consumers who must expend equally valuable resources determining where to have their cramming complaint addressed.

I advance that the record is not sufficiently clear to warrant inclusion of the FCC contact information on consumer bills at this time. Rather, the record should be supplemented before such action is taken. First, the FCC should disclose its process for resolving consumer complaints. As an example, TRA Rule 1220-4-2-.58(6) contains a detailed process of how a consumer complaint will be resolved. Without knowledge of the process the FCC will use to resolve complaints, state commissions cannot adequately compare the merits of FCC complaint resolution relative to existing state procedures. Secondly, the FCC should augment the record to discuss coordination of complaint resolution for individual consumers between states and the FCC. The NPRM considers coordination for the purpose of law enforcement activities.<sup>7</sup> While law enforcement activities are important in protecting consumers from broad-based, pervasive cramming activities, I hold that it is equally important to provide economic relief to individual consumers. The record should be augmented to provide this information. Finally, the record should be updated to account for how deregulatory activities at the state level have impacted state commission oversight of cramming complaints. If states have lost jurisdiction or have had their ability to resolve complaints restricted, then federal oversight is likely a preferable alternative for consumer protection.

The trend in telecommunications regulation across the country is movement away from traditional economic rate regulation leaving state commissions with residual regulatory responsibilities focused on consumer protection and wholesale market issues. I appreciate the FCC addressing a matter, like cramming, that is so consequential to the consuming public.

Dated: October 24, 2011

Respectfully submitted,



Chairman Kenneth C. Hill  
Tennessee Regulatory Authority

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<sup>5</sup> NPRM at footnote 111.

<sup>6</sup> NPRM at Para. 66 referencing FTC Reply Comments at 12.

<sup>7</sup> NPRM at Para. 66.

(Rule 1220-4-2-.57, continued)

- (11) In instances in which the Authority has ordered facilities-based carriers to provide toll-free service, all resellers shall also provide toll-free service.
- (12) All resellers shall provide a toll-free number for customers to call regarding questions and complaints.
- (13) All resellers shall pay an inspection, control and supervision fee as required by T.C.A. §65-4-301.
- (14) All resellers shall comply with Rule 1220-4-2-.13 regarding customer complaints.
- (15) All resellers shall file ad valorem tax reports pursuant to T.C.A. §67-5-1301 *et seq.*
- (16) Violation of state law or the Authority's rules may constitute grounds for fines or revocation of a reseller's certificate as described below:
  - (a) If the Chief of the Consumer Services Division has cause to believe that a reseller is in violation of an Authority rule or state law, he/she shall notify the reseller of the alleged violation. The notice shall include copies of any documentation indicating that the reseller is in violation of the rule or statute.
  - (b) The reseller shall have thirty (30) days to provide a written response to the notice. Failure to respond to the notice shall be considered grounds for summary revocation of the reseller certificate.
  - (c) After reviewing the response the Chief may recommend to the Authority the issuance of a show cause order pursuant to T.C.A. §65-2-106.
  - (d) Upon a determination that a reseller is in violation of a statute or Authority rule, the Authority may impose fines, revoke the reseller's certificate or order such other remedies as provided by law.

**Authority:** T.C.A. §§65-2-102, 65-4-115, 64-4-117, 65-4-120, 65-4-201, 65-5-102, and 65-5-206. **Administrative History:** Original rule filed March 28, 1995; effective June 13, 1995. Editorial changes made by the Secretary of State pursuant to Public Chapter 305 of 1995; "Commission" and references to the "Commission" were changed to "Authority" and references to the "Authority"; effective March 28, 2003.

#### **1220-4-2-.58 BILLING REQUIREMENTS FOR CHARGES ON CONSUMER'S TELEPHONE BILLS.**

- (1) Definitions
  - (a) "Authority" refers to the Tennessee Regulatory Authority
  - (b) "Authorized individual" means a person authorized to make billing and service decisions regarding a telephone account. A person under the age of eighteen (18) does not qualify as an "authorized individual" unless they are the person responsible for the telephone bill.
  - (c) "CLEC" refers to a competitive local exchange carrier.
  - (d) "Cramming" is the submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on a subscriber's local telephone bill.
  - (e) "ILEC" refers to an incumbent local exchange carrier.
  - (f) "LPIC" means a subscriber's preferred intraLATA carrier.
  - (g) "PIC" means a subscriber's preferred interLATA carrier.

(Rule 1220-4-2-.58, continued)

- (h) "Submitting carrier" means a telecommunications service provider, including but not limited to a LEC, ILEC, CLEC, CTSP, IXC, and reseller, that submits to a subscriber's primary local exchange carrier a charge for inclusion on the subscriber's telephone bill.
  - (i) "Third Party Service Provider" refers to a company other than the subscriber's local and/or PIC or LPIC provider that bills a subscriber for services on their telephone bill.
- (2) No telecommunications service provider, as defined in Tenn. Code Ann. § 65-4-101(c), authorized to do business in Tennessee by the Authority shall cause a charge for its services or that of another service provider to be placed on a subscriber's telephone bill unless the following procedures are followed:
- (a) Telecommunications service providers and/or billing agents may not bill for services provided by submitting carriers that lack any required certification by the Authority to do business in Tennessee. Obtaining a copy of the submitting carrier's certification order issued by the Authority shall constitute compliance with this rule.
  - (b) Charges on telephone bills shall have sufficient detail and explanation to allow a subscriber to understand the charge's purpose and origin. Lists of fees such as "service fee," "membership," "miscellaneous," and "calling plan" are deemed insufficient detail and are not permitted. The charge should, at a minimum, describe the service, the date the service was provided to the subscriber, the name of the service provider and a toll-free number of the service provider.
  - (c) A toll-free number shall be listed on the telephone bill of the company billing the charge so that subscribers can inquire about the nature of the charge. This toll-free number shall be answered weekdays from 8:00 AM to 5:00 PM local time.
  - (d) Upon request by the subscriber, the submitting carrier shall provide the name of the authorized individual who approved the charge and the date of the approval. Failure to supply this information to the subscriber within three (3) business days from the initial request shall be sufficient grounds to waive disputed charges.
  - (e) Intrastate and interstate charges shall be listed on the subscriber's telephone bill within three (3) billing cycles after the service was provided. International charges shall be listed on the subscriber's telephone bill within four (4) billing cycles.
  - (f) Authorization for the placing of such charges for services on a customer's telephone bill shall not be combined with inducements of any kind involving the element of chance on the same document.
  - (g) Telecommunications service providers shall place a statement on the subscriber's telephone bill indicating that non-payment of disputed third party charges will not result in the disconnection of local service.
  - (h) Telecommunications service providers shall fully comply with Tenn. Code Ann. § 47-18-1526, 47 CFR §64 and 16 CFR §310 regarding maintaining lists of persons who do not wish to receive telephone solicitations by or on behalf of persons or entities which are commonly referred to as "don't call lists." It shall be a separate violation of this Rule Chapter for the purpose of a fine to fail to place a subscriber on a "don't call list" or to call a customer that is on such a list in full conformity with appropriate state and federal laws, regulations or rules.
  - (i) Telecommunications service providers shall comply with Tenn. Code Ann. §§ 47-18-1526(c)(1), (2)(A) and (B) as amended in Public Acts 1998, Chapter 734, which prohibits



(Rule 1220-4-2-.58, continued)

placing telephone calls to a consumer from a telephone number if the telephone number of the caller is unlisted or if the telephone solicitor or verifier is using telephone equipment which blocks the caller ID function on telephone equipment.

- (3) No telecommunications service provider may submit charges for telecommunications services to be included on a subscriber's telephone bill without first having obtained the prior consent of an authorized individual for such charges to appear on the telephone bill. Casual billing, including but not limited to collect calls, third party calls and calls to a carrier's toll access number, is exempt from the provisions of this subsection. Telecommunications service providers may not use the following practices to obtain the subscriber's consent:
  - (a) Misleading, deceptive, or unfair marketing acts or practices.
  - (b) The entry to a contest or the awarding of a prize or other similar enticements involving an element of chance.
- (4) Telecommunications service providers are required to offer their customers a service that blocks the placing of monthly recurring charges on telephone bills by third party service providers. This blocking service will give the subscriber the ability to better prevent unauthorized charges appearing on his or her telephone bill by not allowing third party service providers the ability to place monthly recurring charges on the customer's bill without proper verification. Authorized casual billing of toll calls such as collect, third party and calls to a carrier's toll access number as well as authorized charges for directory advertising are excluded from this blocking service. The method of verifying charges for customers with the third party bill block service is described below:
  - (a) The third party service provider shall not submit charges to a subscriber's ILEC/CLEC without first obtaining a letter of authorization ("LOA") from an authorized individual for the telephone account. The LOA shall include the name and address of the company providing the service, a description of the service, an itemization of the cost including whether the charge is one-time or a recurring fee, and a statement confirming that the person signing up for the service is an authorized individual for the telephone service.
  - (b) The LOA shall not be combined with inducements of any kind on the same document.
  - (c) A copy of the LOA must be provided to the telecommunications service provider, if requested, as authority from the customer to place a monthly recurring charge on his or her telephone bill.
  - (d) ILECs/CLECs will not remove a third party service provider block without first calling the subscriber and obtaining his or her verbal approval.
- (5) Telecommunications service providers are required to file tariffs with the Authority describing the third party service provider block service and the procedures to remove the blocking service within one hundred eighty (180) days of the effective date of this Rule Chapter. Requests for additional time to file a tariff for this blocking service must be filed with the Authority within the one hundred eighty (180) days mentioned above. Such requests shall contain an explanation of why the telecommunications service provider cannot provide the third party service provider blocking service.
- (6) Any subscriber to telecommunications services in the State of Tennessee who wishes to file a complaint involving an allegation of cramming against a telecommunications service provider, or a person acting on behalf of a telecommunications service provider, pursuant to Tenn. Code Ann. § 65-4-125 and the provisions of this rule chapter, may do so in the manner set forth below:
  - (a) The following procedures shall be followed with respect to subscriber complaints:

(Rule 1220-4-2-.58, continued)

1. A complaint must follow substantially the form of complaint as provided by the Authority, and must include such information, as required by that form, as necessary for the processing of the complaint, including, without limitation, whether the telecommunications service provider has been contacted and the results of any such contact.
2. On the receipt by the Authority of any complaint, or inquiry, which appears to involve cramming, the complaint or inquiry shall be referred to the Consumer Services Division.
3. If the complaint is filed on, or substantially in compliance with, the approved form, the Consumer Services Division will contact the person filing the complaint ("Complainant") to verify the facts alleged, and to obtain any further information deemed necessary for the processing of the complaint.
4. If the complaint or inquiry is not filed on the approved form, the Consumer Services Division will contact the Complainant, to determine if that person wishes to proceed with a complaint, and, if so, to determine and verify, such information as may be necessary for the processing of the complaint, which information shall be included in the complaint.
5. If the Consumer Services Division determines that the complaint is without merit on its face, the Consumer Services Division will so advise the person making the complaint, and will further advise such person that he or she has the right to file a formal complaint with the Authority under the general procedures for the filing of complaints.
6. If the Consumer Services Division determines that the complaint is in proper form for processing, and is not without merit on its face, the Consumer Services Division will serve a copy thereof, by e-mail, facsimile, by personal delivery, or by regular mail, on the telecommunications service provider, or other person, who is alleged to have violated Tenn. Code Ann. § 65-4-125(b).
7. Within ten (10) days after service of the complaint (three (3) additional days from the date of mailing, if service is by mail) or within such further time as may be allowed by the Consumer Services Division on the request of the Respondent, the telecommunications service provider, or other person served, shall file a written response with the Consumer Services Division admitting or denying the factual allegations of the complaint, and including defenses based on any issues of law, and providing such other information, justification or argument as the Respondent may deem appropriate. A copy of that response will be served on the Complainant.
8. Promptly after the receipt of that response, the Consumer Services Division will determine if further information is necessary, and, if so, shall endeavor to obtain it; and will attempt to adjust the complaint to the satisfaction of both parties.
9. If the parties agree to a resolution of the matter, written evidence of that resolution shall be placed in the file of the Consumer Services Division and the matter will be closed.
10. If the Respondent fails to file a timely response to the complaint, the factual allegations thereof shall be deemed to have been admitted.
11. If the Respondent fails to file a timely response, or if the parties fail to agree to a resolution of the matter, the Consumer Services Division shall certify the matter to the Authority, with recommendations in the premises. Any such certification shall identify



(Rule 1220-4-2-.58, continued)

the issues raised by the parties and shall include a computation of the amounts which may be due to the Complainant.

12. The Authority shall consider the matter as certified by the Consumer Services Division in an open meeting; and shall determine whether the matter involves only legal issues or involves contested issues of fact. If the matter involves only legal issues the Authority shall set a briefing schedule and may set the matter for oral argument. If the matter involves contested issues of fact, the Authority may either convene a contested case and follow contested case procedures for its determination; or the Authority, on the basis of the investigation made by the Consumer Services Division, may issue a show cause order pursuant to Tenn. Code Ann. §65-2-106.
  13. The Authority may, however, in its discretion entertain and decide any subscriber complaints itself, without referring the matter to the Consumer Services Division, under the general procedures provided for the disposition of complaints, including, without limitation, the issuance of a show cause order pursuant to Tenn. Code Ann. § 65-2-106.
- (b) A telecommunications service provider, or person acting on behalf of a telecommunications service provider, who is found by the Authority to have violated Tenn. Code Ann. §65-4-125(a), or any provision of Rule 1220-4-2-.56 shall:
1. Be subject to the imposition of the civil penalty provided in Tenn. Code Ann. §65-4-125(f), as the Authority may determine;
  2. Provide upon request of the subscriber's previous carrier, all billing records to the original telecommunications service provider that are related to the unauthorized provision of service to the customer within forty-five (45) days of the subscriber's request to return the customer to the original telecommunications service provider.
  3. Pay the original telecommunications service provider any amount paid to it by the subscriber that would have been paid to the original telecommunications service provider if the unauthorized switch had not occurred, within thirty (30) days of the subscriber's request to return the subscriber to the original telecommunications service provider. If the unauthorized carrier has already made payments to the subscriber's original carrier pursuant to any federal laws or regulations, the payment under this rule shall be reduced by the amount already paid pursuant to such federal laws and regulations.
  4. Be required to pay to the subscriber wronged by such violation any amount which the Authority is authorized by law to require to be paid.
- (c) In addition to the remedies provided by this rule to subscribers, the Authority may, on its own motion, or on the recommendation of the Consumer Services Division, or on the motion of the Consumer Advocate Division or any other interested person, order the investigation of the practices of any telecommunications service provider, or persons acting on behalf of a telecommunications service provider, to determine if such telecommunications service provider, or person acting on behalf of any telecommunications service provider, has followed a pattern of continued violation of Tenn. Code Ann. § 65-4-125(b), or of Rule 1220-4-2-.58; and if such investigation discloses such a pattern of continued violation, the Authority shall issue a show cause order with respect to such acts pursuant to Tenn. Code Ann. § 65-2-106.
- (7) Telecommunications service providers shall maintain a list of subscriber complaints by service provider concerning disputed billings for services for twenty-four (24) months and shall provide this list and any other information required by the Authority upon request. This information shall be



(Rule 1220-4-2-.58, continued)

submitted to the Authority within twenty (20) days unless the request for additional time is approved by the Authority. The list shall include the following information:

- (a) the name, address, and telephone number of the subscriber;
  - (b) the name of the service provider and the amount charged to the subscriber, and a description of the disputed charge;
  - (c) the date the complaint was filed and the date the complaint was resolved; and
  - (d) a brief summary how the complaint was resolved including any adjustment awarded to the subscriber.
- (8) Telecommunications service providers are required to notify the Authority's Consumer Services Division of third party service providers that receive greater than fifty (50) subscriber complaints within one month.
  - (9) Telecommunications service providers are required to provide, without charge, blocking services to their subscribers that will prevent calls to 900 number companies and international numbers. ILECs/CLECs are required to file appropriate tariffs for these services with the Authority within 90 days of the effective date of this rule chapter.
  - (10) Telecommunications service providers shall inform their subscribers twice a year of their third party, 900 and international blocking services and how to subscribe to the services. This notification can accompany the subscriber's telephone bill.
  - (11) Each telecommunications service provider is required to itemize the charges for its services it submits for inclusion on an subscriber's telephone bill at least twice a year, or upon the request of the subscriber, but not more frequently than once a month.
  - (12) Nothing in this rule chapter shall be construed to permit a telecommunications service provider, third party service provider or their agents to violate any state or federal law, regulation or rule.
  - (13) This rule chapter is to be liberally construed for the protection of consumers of the State of Tennessee and is remedial in nature.
  - (14) Any telecommunications service provider that may have a civil penalty assessed against it by the Authority for failure to comply with Tenn. Code Ann. § 65-4-125 or any provisions of this rule, may still be subject to other civil or criminal remedies or penalties available under state or federal law including, but not limited to, the Tennessee Consumer Protection Act.
  - (15) The provisions of this chapter shall not be construed to exceed the jurisdiction according to the Tennessee Regulatory Authority under state and federal law.
  - (16) If one or more of the term(s) or provision(s) of this rule chapter or the application thereof, to any extent, are held to be invalid or unenforceable, then the remainder of this rule chapter, shall not be affected thereby.

**Authority:** T.C.A. §§4-5-201 et. seq., 65-2-102, 65-2-106, 65-4-101, 65-4-104, 65-4-123, 65-4-125, and 47 U.S.C. § 258. **Administrative History:** Original rule filed September 14, 1999; effective November 26, 1999.